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***Via Electronic Mail Delivery***

Mr. John Muleta, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte Communication***  
*Enhanced 911 Emergency Systems – Non-Initialized Handsets*  
*CC Docket No. 94-102*

Dear Mr. Muleta :

Sprint Corporation submits this *ex parte* letter in support of the recommendation made by the Emergency Services Interconnection Forum (“ESIF”) that the Commission encourage – but not require – wireless carriers to implement Annex C of the Phase II E911 industry standard as a means to address the so-called “call-back” problem for non-initialized handsets.<sup>1</sup>

As Sprint discusses below, there is no basis in the record to justify a new mandate at this time. Indeed, Sprint continues to believe that the Commission should instead consider removing 911 requirements as applied to non-initialized handsets, which would eliminate the underlying problem. Any need for this requirement has been eliminated by the explosion in consumers with access to wireless service and the evidence that most donation programs currently utilize service-initialized handsets. Moreover, harassing, abusive and prank calls originating from non-initialized handsets continue to disrupt 911 services and pose a public safety issue.

**BACKGROUND**

As part of their 1996 Consensus Agreement, the wireless industry and public safety community agreed that access to 911 service should be available to callers that purchase services from a wireless service provider.<sup>2</sup> Despite this agreement precluding non-subscriber access, the Commission instead decided to require wireless carriers to transmit E911 calls made by persons who subscribe to no wireless services at all – that is, calls originated from “non-service initial-

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<sup>1</sup> See Letter from Jim Nixon, ESIF Chair, to John Muleta, Bureau Chief, Wireless Telecommunications Bureau, CC Docket No. 94-102 (February 24, 2003)(“ESIF February Letter”); Letter from Jim Nixon, ESIF Chair, to John Muleta, Bureau Chief, Wireless Telecommunications Bureau, CC Docket No. 94-102 (March 5, 2003)(“ESIF March Letter”).

<sup>2</sup> See Joint Public Safety Consensus Agreement Ex Parte, CC Docket No. 94-102, p. 5 (Feb. 12, 1996).

ized” handsets.<sup>3</sup> The Commission imposed this additional “call-back” mandate on wireless carriers even though it recognized that the requirement would create a new set of problems.<sup>4</sup>

Three years ago, public safety agencies asked the Commission to “initiate an update of the record on the call-back number issues” for 911 calls made from non-initialized handsets.<sup>5</sup> The public safety agencies noted that an increasing number of handsets were being donated to various charitable organizations, and they expressed “concern” that “additional education/training solutions” would be necessary if these donated phones also happen to be non-initialized handsets.<sup>6</sup>

The Commission sought public comment on this request.<sup>7</sup> Comments submitted by industry documented that most carrier-donated handsets were initialized and that the public safety concerns were already addressed for most donated phones. In contrast, as the Commission recognized, the public safety agency comments contained “minimal data . . . indicating the actual percentage of wireless 911 calls from non-initialized phones that have required call-back by the PSAP.”<sup>8</sup> The Commission commenced a NPRM specifically asking for “further information concerning the scope of the problem as it exists today, as well as its anticipated scope going forward.”<sup>9</sup> The second round of comments largely repeated what was stated in the first round. As the Commission noted, no data was provided to show the volume of non-initialized traffic or non-initialized calls requiring call-back capability.<sup>10</sup>

The only evidence cited by the Commission – which came from outside the record -- reflected that the percentage of 911 calls from non-initialized handsets was very small and that the number of callers requiring call-back capability would be even less. According to a Los Angeles County E911 trial, only one-fourth of one percent (0.26%) of all wireless 911 calls sampled originated from non-initialized handsets.<sup>11</sup> While the number of these calls requiring a call-back was not recorded, this number is clearly “substantially less than the number of non-initialized 911 calls received by PSAPs.”<sup>12</sup>

Based on the record, the Commission properly determined in its *Non-Initialized Phone Order* that a targeted response to the public safety concern was warranted.<sup>13</sup> Since the problem

<sup>3</sup> See *First E911 Order*, 11 FCC Rcd 18676, 18692 ¶ 29 (1996). See also *First E911 Reconsideration Order*, 12 FCC Rcd 22665, 22717 ¶¶ 108-09 (1997).

<sup>4</sup> See *First E911 Order*, 11 FCC Rcd 18696 ¶ 38; *First E911 Reconsideration Order*, 12 FCC Rcd at 22717-18 ¶ 108.

<sup>5</sup> See APCO, NASNA, NENA and the Texas 9-1-1 Agencies Ex Parte Letter, CC Docket No. 94-102, at 3 (April 28, 2000).

<sup>6</sup> See *id.* at 2-3.

<sup>7</sup> See *Public Notice*, “Comment Sought on Request for Further Consideration of call Back Number Issues Associated with Non-Service Initialized Wireless 911 Calls,” 15 FCC Rcd 10391 (May 18, 2001).

<sup>8</sup> *Non-Initialized Handset NPRM*, 16 FCC Rcd 11491, 11494 ¶ 6 (May 25, 2001).

<sup>9</sup> *Id.* at ¶ 7.

<sup>10</sup> *Non-Initialized Phone Order*, 17 FCC Rcd 8481, ¶ 9.

<sup>11</sup> See *Non-Initialized Phone Order*, 17 FCC Rcd at 8485 n.21.

<sup>12</sup> *Id.*

<sup>13</sup> See *Non-Initialized Phone Order*, 17 FCC Rcd 8481 (April 29, 2002).

was largely limited to non-initialized donated phones and commercial 911-only phones, the Commission required these handsets to be programmed with "123-456-7890" as their telephone number/mobile identification number so PSAPs could identify the phones as non-initialized.<sup>14</sup> The Commission further concluded that it "cannot require carriers to implement a call-back solution":

This conclusion reflects both the dearth of information received regarding the scope of the problem as well as record evidence that the development and implementation of any technical solution would likely require extensive changes to the networks at significant cost.<sup>15</sup>

Thereafter, the Emergency Services Interconnection Forum ("ESIF"), a collaborative panel co-sponsored by the Alliance for Telecommunications Industry Solutions ("ATIS") and the National Emergency Number Association ("NENA"), petitioned the Commission to reconsider its 123-456-7890 solution because of apparent conflicts with international roaming mobile identification numbers.<sup>16</sup> ESIF indicated that Annex C to the Phase II E911 standard (J-STD-036) might be a "plausible" solution to the call-back issue.<sup>17</sup> The Commission thereafter stayed the effective date of its new rules so that ESIF, which includes representatives of carriers, manufacturers and public safety, could further consider the matter.<sup>18</sup>

On February 24, 2003, ESIF recommended that carriers use Annex C of J-STD-036 as the way to address call-back from non-initialized phones.<sup>19</sup> Under this arrangement, public safety agencies would receive, on calls made from non-initialized handsets, the surrogate code of 9-1-1 plus seven digits based on the handset's Electronic Serial Number ("ESN") or International Mobile Station Equipment Identity ("IMEI"). The two major advantages to ESIF's recommendation are that many carriers had already incorporated the standard as part of Phase II deployment and it provides a unique handset identifier. Importantly, ESIF recommended that the Commission *not mandate* use of the "Annex C solution" because of the "potential[] significant cost to PSAPs, CMRS carriers and LECs,"<sup>20</sup> and because the approach would be "more complex and far reaching than the implementation of the Commission's proposed sequential number code."<sup>21</sup> ESIF, among other things, noted that Annex C is part of the Phase II industry standard and that current Phase I solutions understandably may not contain this capability.<sup>22</sup>

Sprint agrees with ESIF that the Commission should not impose any additional mandates with respect to non-initialized handsets, but should allow the issue to be addressed through the natural deployment of Phase II.

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<sup>14</sup> See *id.* at 8489 ¶ 26.

<sup>15</sup> *Id.* at 8485 ¶ 11.

<sup>16</sup> See ATIS Petition for Reconsideration, CC Docket No. 94-102, at 5-6 (June 12, 2003).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> See *Non-Initialized Rules Stay Order*, 17 FCC Rcd 19012 (Sept. 30, 2002).

<sup>19</sup> See ESIF February Letter.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> ESIF March Letter at 1.

<sup>22</sup> See ESIF February Letter at 2.

**THE RECORD EVIDENCE DOES NOT JUSTIFY THE IMPOSITION OF NEW CALL-BACK/NON-INITIALIZED RULES AT THIS TIME**

One year ago, the Commission determined that it “cannot” require carriers to develop and implement a call-back solution because, among other things, there is a “no evidence” concerning the scope of the problem:

[W]e conclude that the scope of the non-initialized phones issue should first be determined before requiring a solution to solve it. No concrete data was submitted in comments and reply comments in this proceeding, nor has the record been supplemented with any such data since the close of the pleading cycles.<sup>23</sup>

The Commission could not justify imposition of a separate network solution a year ago; nor can it justify such a solution today. Despite the passage of a year, there still is no evidence in the record indicating the number of calls from non-initialized handsets, much less evidence of the need for a call-back capability to such handsets. Further, APCO and NENA, the public safety national organizations, were active participants in the ESIF process that concluded that a new mandate was not warranted under the current circumstances.

In addition to the dearth of evidence demonstrating any need for a separate network solution, it appears that the two major concerns – donation programs and 911-only phones – have been addressed. First, Sprint, like many other carriers, uses only initialized handsets in the donation programs in which it participates.<sup>24</sup> Second, the identification problem caused by 911-only handsets can be addressed simply by changing the surrogate number programmed into the handset from “123-456-7890” to another format, *e.g.*, 911 followed by seven digit ESN. Neither Sprint nor its customers should be required to pay for a solution to a problem caused by manufacturers that profit from selling expensive phones using an increasingly antiquated technology that does not compensate carriers for network use.<sup>25</sup>

Moreover, public safety agencies can obtain Annex C functionality from Sprint in Phase II systems. Sprint’s Phase II systems incorporate Annex C, and accordingly, where Sprint has deployed Phase II, the surrogate number created by Annex C is available for delivery to the PSAP.<sup>26</sup> Thus, PSAPs can obtain Annex C functionality by upgrading their E911 networks to Phase II.

Sprint does not have Annex C functionality in its Phase I markets (except where Sprint uses Lucent equipment and the PSAP chooses to use the NCAS approach). However, the unavailability of Annex C functionality in Phase I should not be surprising because Annex C was never a part of the Phase I industry standard.

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<sup>23</sup> *Non-Initialized Phone Order*, 17 FCC Rcd at 8485-86 ¶¶ 9 and 11-12.

<sup>24</sup> *See Id.* ¶ 28 (“We adopt these requirements in an environment where many carriers are already participating in service-initialized donation programs, where a dialable telephone number is delivered to the PSAP and call-back capability is provided.”)

<sup>25</sup> For example, the Magnavox Mobile911 phone uses analog technology that is being phased out and costs \$209.90. *See* [www.mobile911.com/all\\_about/product.asp](http://www.mobile911.com/all_about/product.asp). The manufacturer’s web site does not advise prospective purchasers that the analog rule is slated for sunset.

<sup>26</sup> Sprint cautions that its situation may not be representative of other carriers.

Sprint has previously advised the Commission that its vendors have indicated they would impose a sizable fee to develop Annex C capabilities for Phase I systems.<sup>27</sup> This new expense cannot be justified, given that a viable alternative already exists (programming individual non-initialized handsets) and especially given that Phase I is being replaced with Phase II E911 service. More fundamentally, however, since there is “no evidence” concerning the scope of any call-back policy, there is no demonstrated need to investigate further expensive network retrofit solutions.

#### **FINITE RESOURCES SHOULD NOT BE DIVERTED FROM IMPLEMENTATION OF OPERATIONAL PHASE I AND PHASE II SYSTEMS**

It would be imprudent for the Commission to impose a separate network solution for the non-initialized phones under these circumstances. Dr. Hatfield’s report last fall documented both the importance of operational E911 wireless location systems and the complexity of implementing these systems.<sup>28</sup> Because of these considerations, Dr. Hatfield recommended that the Commission avoid “requirements creep” – that is, “avoid the addition of new requirements during this critical stage of [E911] rollout.”<sup>29</sup>

There are over 140 million wireless customers today. Given the complexity and importance of E911 implementation, available resources (both carrier and public safety) should be devoted to implementing operational Phase I and Phase II E911 systems. Sprint submits that the public interest would not be served by Commission action that would divert finite resources to provide enhanced capabilities to the very small number of non-initialized handsets in the market. Simply put, the Commission should permit carriers to focus their efforts on deployment of enhanced 911 services. And as noted above, there is no record or policy support for a new government mandate in this area.

#### **IT IS TIME FOR THE COMMISSION TO REEXAMINE WHETHER TO ELIMINATE THE CALL-BACK/ NON-INITIALIZED PROBLEM ALTOGETHER**

The call-back problem with non-initialized handsets arose because the Commission in 1996 required wireless carriers to deliver 911 calls from non-initialized handsets – when both public safety and industry had specifically recommended that it not take this course.<sup>30</sup> Given the changes that have occurred over the past seven years, the Commission should reevaluate its requirement that wireless carriers transmit calls from non-initialized handsets.<sup>31</sup>

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<sup>27</sup> See Sprint Comments, CC Docket No. 94-102, at 5 (Aug. 2, 2002).

<sup>28</sup> See Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services*, WT Docket No. 02-46 (Oct. 15, 2002).

<sup>29</sup> *Id.* at 40.

<sup>30</sup> See Joint Public Safety Consensus Agreement Ex Parte, CC Docket No. 94-102 (Feb. 13, 1996). See also Sprint Comments, CC Docket No. 94-102, at 1-5 (July 9, 2001).

<sup>31</sup> Indeed, Section 11 of the Communications Act requires such a reexamination. See 47 U.S.C. § 161(a)(1) (“In every even-numbered year (beginning with 1998), the Commission *shall* review *all* regulations . . . that apply to the operations or activities of any provider of telecommunications service.”)(emphasis added). To Sprint’s knowledge, the Commission has never conducted a Section 11 biennial review its Rule 20.18(b) requirement as applied to non-initialized handsets.

Wireless service was expensive when the Commission adopted its non-initialized phone requirement in 1996. Per-minute prices were above 40 cents and there were only 34 million mobile customers at the time.<sup>32</sup> Today, wireless phones have become “a mass-market consumer device.”<sup>33</sup> The Commission has noted that “[s]ince 1994, the average revenue per minute has fallen from \$0.47 in December 1994 to \$0.12 in December 2001, a decline of 74 percent.”<sup>34</sup> As a result, there are today over 140 million mobile customers.<sup>35</sup> With the widespread availability of affordable wireless service, any need for the non-initialized handset requirement has run its course, in Sprint’s view.

There would, moreover, be public interest and public safety benefits by removing 911 obligations as applied to non-initialized handsets. As the Commission has itself recognized, “abolishing the current requirement that carriers transmit all 911 calls to PSAPs without respect to their call validation process would allow PSAPs with E911 Phase I capability to return all 911 calls, since all calls would necessarily come from service-initialized handsets. In addition, this approach could potentially reduce the number of fraudulent 911 calls made from wireless phones, or at least reduce the costs of having to dispatch emergency services to respond to bogus calls.”<sup>36</sup> Non-initialized handsets are a source of harassing, abusive and prank calls<sup>37</sup> and elimination of the non-initialized requirement would prevent these disruptions to 911 service and public safety. Given these changes, Sprint urges the Commission to re-evaluate the continuing need for 911 obligations on non-initialized handsets.<sup>38</sup>

## CONCLUSION

In sum, Sprint agrees with ESIF that the Commission should not mandate that carriers deploy a separate “Annex C solution” to address the non-initialized phone issue. In particular, a mandated “Annex C” solution for Phase I E911 services is not warranted. Carriers should be permitted to implement Annex C as part of the natural deployment of Phase II services.<sup>39</sup>

<sup>32</sup> See *First Annual CMRS Report*, 10 FCC Rcd 8844 (1995).

<sup>33</sup> *Seventh Annual CMRS Report*, 17 FCC Rcd 12985, 13106 (2002).

<sup>34</sup> *Id.* at 13014.

<sup>35</sup> See [www.wow.com](http://www.wow.com).

<sup>36</sup> *Non-Initialized Phone Order*, 17 FCC Rcd at 8489 ¶ 24.

<sup>37</sup> See *Public Notice*, “FCC Clarifies that 911 Call-Forwarding Rules do not Preclude Wireless Carriers from Blocking Fraudulent 911 Calls from Non-Service Initialized Phones Pursuant to State and Local Law,” 17 FCC Rcd 21877 (October 31, 2002).

<sup>38</sup> Sprint acknowledges that last year the Commission “decline[d]” to reevaluate this requirement. See *id.* However, given the mandate in Section 11 of the Act, Sprint submits that the Commission is required to reevaluate the continuing need for the rule.

<sup>39</sup> As noted earlier, Sprint’s Phase II systems incorporate Annex C. While we believe that other Phase II systems also include this functionality, we cannot speak for other carriers.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed with the Secretary's office for filing in CC Docket No. 94-102.

Respectfully submitted,



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